

ORDER OF DISMISSAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARTIN D. ROYAL,)	No. C 13-2510 RMW
)	
Petitioner,)	ORDER OF DISMISSAL
)	
v.)	
)	
M. E. SPEARMAN, WARDEN,)	
)	
Respondent.)	
_____)	(Docket No. 8)

On June 4, 2013, petitioner, a California prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Docket No. 1.) On October 23, 2013, the court issued an order to show cause. (Docket No. 5.) On December 31, 2013, respondent filed a motion to dismiss. (Docket No. 7.) On January 27, 2014, petitioner filed a notice of voluntary dismissal. (Docket No. 8.) Rule 41 of the Federal Rules of Civil Procedure grants a party bringing an action the absolute right to dismiss such action by filing a notice of dismissal “at any time before service by the adverse party of an answer or of a motion for summary judgment.” See Fed. R. Civ. P. 41(a)(1)(i). Here, respondent has filed a motion to dismiss, but not an answer or a motion for summary judgment. Moreover, there is no basis for a finding of prejudice to respondent from such dismissal; although such dismissal is without prejudice to petitioner’s filing a new petition in the future, any untimeliness arguments would, at a minimum, be applicable equally to a new petition filed by petitioner at such later date.

Accordingly, this action is hereby **DISMISSED** without prejudice

The clerk shall terminate all pending motions and close the file.

IT IS SO ORDERED.

DATED: HEB 1


RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MARTIN DEMMENT ROYAL,
Plaintiff,

Case Number: CV13-02510 RMW

CERTIFICATE OF SERVICE

v.

M E SPEARMAN et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 26, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Martin Demment Royal V65542
Rainer B-334U
CTF
PO Box 705
Soledad, CA 93960-0705

Dated: March 26, 2014

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk